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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

PEBBLE LIMITED PARTNERSHIP,

Plaintiff,

vs.

ENVIRONMENTAL PROTECTION
AGENCY, *et al.*,

Defendants. _____ /

**PLAINTIFF'S RESPONSE TO
ORDER GRANTING MOTIONS TO
QUASH SUBPOENAS**

**CIVIL ACTION NO.
3:14-cv-00171-HRH**

Plaintiff Pebble Limited Partnership (“PLP”) submits this Response to the Court’s Order of November 18, 2015,¹ which granted motions to quash document subpoenas that PLP served on four nonparties—the Alaska Conservation Foundation, Dr. Samuel Snyder, Bristol Bay Regional Seafood Development Association, and Robert Waldrop. In light of that Order, PLP has taken or intends to take the following steps:

1. PLP has withdrawn the subpoenas at issue in the matters pending before this Court² and in two other federal district courts (W.D. Wash. and D. Mont.) in which similar motions to quash are pending.
2. In the near term, PLP will focus its discovery efforts on EPA.
3. If PLP concludes that there is a need for further nonparty discovery, then it will pursue such discovery through the limited use of subpoenas that will be narrowly tailored in full compliance with the Court’s November 18 Order.

At this point, based on documents that various nonparties have produced, it is evident that documents do indeed exist that would be responsive to a compliant subpoena—that is, documents that concurrently (i) are unlikely to be in EPA’s possession (*e.g.*, internal communications of *de facto* federal advisory committee (“FAC”) members; communications between and among *de facto* FAC members that were not also addressed to EPA), and (ii) go to the heart of (and may be needed to substantiate) PLP’s claim that EPA “established” or “utilized” *de facto* FACs in violation of the Federal Advisory Committee Act (“FACA”).

¹ Docket No. 200.

² The two outstanding disputes before this Court involve miscellaneous actions that were transferred from the Central District of California. *See Natural Resources Defense Council v. Pebble Ltd. P’Ship*, No. 3:15-mc-0038-HRH, and *Nastri, et al. v. Pebble Ltd. P’ship*, No. 3:15-mc-0034-HRH.

For example, one nonparty has produced emails exchanged between various FAC members (not addressed to EPA) that show or strongly imply that these individuals were taking action *at the request of EPA* on issues directly relevant to both the Bristol Bay Watershed Assessment (“BBWA”) and EPA’s 404(c) determination. *See, e.g.*, Ex. 1 at 633 (including issues raised by EPA on which several members of the Anti-Mine Coalition (“AMC”) and the Anti-Mine Scientists (“AMS”) were following up); Ex. 2 at 1008 (email among three AMC members stating that EPA “need[s] more science”). Indeed, months before EPA launched the BBWA, AMC member Shoren Brown emailed a number of other AMC and AMS members regarding “our science work *in support of EPA*.” Ex. 3 at 390 (emphasis added). Moreover, there are emails between FAC members that also reflect that EPA improperly utilized the FACs for other purposes, including to work on increasing political support for the veto. *See, e.g.*, Ex. 4 at 594 (Shoren Brown of Trout Unlimited provides “Intel from EPA” to FAC members, including that the “report from DC” was that FAC members needed to “fire up media in a major way”).

These emails are only a few examples from documents received from one nonparty. Had PLP not pursued this discovery, it would have had no way of obtaining documents like these that are *both* unlikely to be in EPA’s possession *and* plainly relevant to whether the *de facto* advisory committees were being utilized by EPA within the meaning of FACA.

In addition, it seems probable that key communications between former EPA employee Phil North and certain nonparties will *only* be discoverable if obtained from nonparties. As this Court has recognized, North “appears to be at the center of Pebble’s claims,” that North “was the originator of documents likely related to the claims made in this case,” and that such documents may now only exist in North’s personal email and not in EPA’s files. Docket No. 155 at 2 (order

dated August 27, 2015). To date, PLP has been unable to locate North to serve him with the subpoena that this Court authorized. If PLP cannot locate North, then it may be necessary to seek communications from other nonparties who communicated with him “off the books.”

Dated: November 23, 2015

Respectfully submitted,

/s/ Thomas Amodio

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CERTIFICATE OF SERVICE

I certify that on this 23rd day of November 2015, I electronically filed a copy of the foregoing **PLAINTIFF'S RESPONSE TO ORDER GRANTING MOTIONS TO QUASH SUBPOENAS** using the CM/ECF system, which will electronically serve counsel for Defendants **RICHARD L. POMEROY, STUART JUSTIN ROBINSON, BRAD P. ROSENBERG, ALICE SHIH LACOUR, and ROBIN F. THURSTON**, and counsel for nonparties **CHESTER GILMORE, JEFFREY FELDMAN, JESSICA DILLON, JOSHUA LEVY, MARGARET SIMONIAN, MICHELLE SINNOTT, SARA KELLY, and WILLIAM WAILAND**.

/s/ Jared R. Butcher
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